Investigate the premeditated murder of emotional excitement (stimulation) in the Penal Code of the Republic of Azerbaijan and the Islamic Republic of Iran

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Abstract

Principally criminal responsibility is based on human's free will, judgment and intellection and any condition that causes limit or undermine the person's will or sense of discernment, it will affect his responsibility. Man performs his actions based on conscious and free choice in normal circumstances; it is assumed that at least the person first thinks, then chooses to do or leave the act with free will. But sometimes based on the stimulus arrived, a situation arises in person that he loses power to control the actions and behavior in the form of absolute terms or relative and does things that if he was in the normal circumstances, he would never commit. Essentially intention is not going away in a state of arousal and lack of control over behavior and there are both general and specific intent, intellection and diagnostics as well - except in exceptional cases where the intensity of stimulation is enough to bring that person into madness disease - remains. But motivation is the realm in which the free will of the individual and his ability to control his behavior is limited and thus element of choice undermine sand this would undermine the criminal responsibility.

The historical development conditions of current contemporary Penal Code of states depending on political, economic and social events has provided the rapid and deep-rooted changes field, these changes are important factors not only in temporary Penal Code of administration, but also in the essential evolution of the legal system of the state. These fundamental changes can be carried out together as a result of the formal achievements of some of the neighbors and the exchange of experience and the government occasions. Obviously neighborhood of Azerbaijan and the Islamic Republic of Iran is not to be calculated for years but centuries. There are many factors that make the two states closer together. Due to its close culture and even being uniform between the two countries, Azerbaijan and Iran already has the legal relationships.

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In this article, based on library form collected we try to be familiar with the Penal Code of Azerbaijan and the Islamic Republic of Iran and the views of the two legislators in the murders that occurred under the influence of extreme mental stimulation and there is a fundamental question in this article how much does the impact of intense psychological emotions on first-degree murder in the legal system of these two countries mentioned above cause commutation of the sentence?

Key words: mental emotions (stimulation), Revenge, premeditated murder, Azerbaijani Penal Code

Introduction:

Some know stimulating excuse criteria for declining the power of controlling the behavior as results of excitation caused by stimulates. In this expression stimulating is placed on the territory of inner spiritual force. As we know, the present traditional view does not know inner spiritual compulsion to fix criminal liability. Based on the idea, motive of the crime perpetration is usually desire to relieve instincts and vested interests and social interests and maintaining public order requires citizens to learn how overcome their anger, excitement and other instincts and Penal law has been enacted to control the desires and feelings.(Golduzyan, Page 215, 1378) so the loss of control of the behavior cannot justify crime perpetration or destroys responsibility for the committed as a relative or absolute term because this was as a result of the person's failure. A group of lawyers that considered the above expression inadequate, justified declining responsibilities in a state of arousal through the other way. To their opinions the stimulating excuse criteria is error community of victim and limitation of the committed will (third edition, 1999) According to this view, it is true that anger and excitement normally shall not be responsibility resolver; But when victim himself causes excitation of the victim and anger of the perpetrator, community of his fault and undermine the committed will, liability shall be resolving in the circumstances. Aristotle argues that anger is, a social sense of respect that its scope may be an appropriate response to some of the behaviors of others. (Aristotle: 258 B 4-9, 1378)

Excitement (stimulating):

Short and overall reaction to an unexpected reality with a pleasant emotional state is called excitement. (Kulshrestha&Kapoor, p.188, 2009)Excitement is the translation of the English word Emotion that in terms of the root it is the factor that stirs the organism, such as anger, fear, love. In psychology, emotions have very sensitive and fundamental position because they make up the root of many mental disorders. Even guarantee human health. For example, fear causes to flee from danger. Extensive efforts by philosophers, physiologists and psychologists to investigate the excitement to come, but the practice still remain a hypothesis. Several studies showed that culture also plays an important role on the emergence and development of Excitement effects.

The impact on life

When Excitement, thinking power and power of action could be paralyzed or power. It is more simple that sometimes Excitement makes the mind empty and the individual cannot say anything and

nor do. An example of this is the same proverb fear is brother of death. Because the person is not actually able to do something and reaction sometimes increases the activity of the mind, contains inspiration, creativity and tonic.

Workmanship and performance

When Excitement, the sympathetic and parasympathetic nerves act opposite direction. The sympathetic prepares the body for emergency and parasympathetic calls him to calm and their operation difference reason in preparing chemicals is separate that causes arousal and the other one is relaxing.

Many people believe that a crime that occurs as a result of excitement, in fact, has been committed by stimulating not by a formal subject (Dressle, 467 M L R). When the stimulus (rape) gives the committed the degree of motivation that loses control power of his behavior, in fact, subject, is a tool in stimulating hand and action is attributed to him. This argument may be accepted in certain cases that the intensity of the excitation is to the extent that deprives the committed person's intellection strength fully and makes him mad; but in milder cases of arousal, that discernment sense cannot be distorted completely, is unacceptable. The author believes that undermines power to control the behavior, justifies the stimulated person's penal responsibility resolver. Basically commands and prohibitions of legislators have always found those who understand and fulfill their obligations and avoid free prohibitions and that is why freedom is a condition of criminal responsibility and punishment. Mental and emotional disturbances caused by arousal causes to undermine absolute or relative the ability to control their behavior and in this way the ability to censure or punishment the committed person is destroyed in the form of absolute terms or relative. According to this the other inner spiritual force may also be effective in the same way in criminal liability.

1-2- Types of stimulation and the scope of their impact

The scope of stimulation effect for each person depends on two factors: the severity of the mental stimulation and structure of stimulated person. Due to the intensity of types of stimulation and its impact on ordinary people and also stimulated person, may occur following four modes:

A) Sometimes the entered stimulation is so severe that disclaims a person's ability to reason and recognize clearly, in a way that takes him into a state of near madness. In this case, due to the general deterioration of reasoning, regardless of the impact it might stimulate the other members of the community; the penal responsibility is completely distorted. (Fletcher (George. P, 1978))

B) In some cases, stimulation doesn't make a person mad, but its intensity to such an extent that, firstly, the average person in circumstances affects the defendant; secondly if all members of the community were in this position, they would act as the committed person. In other words, committed response from the public area of the community is justified. For example, the reaction of a man who found his wife in bed with another and kills her, may be justified in terms of dominant individuals of a special society. In the common law system this degree of irritation has been known as mitigation of

criminal responsibility so that if there is such excitement about the murder, it degrades responsibility of the person from murder to manslaughter. British killing law approved in 1957 also adopted the same approach. The criticism about this approach is that do we have expectations of the defendant beyond the ordinary and reasonable people of the society? If all or most ordinary people act a certain way in certain situations, can the defendant be blamed and punished because of behavior in the framework? Haven't we questioned the certain accused in this case because of the weaknesses that are a part of the nature of humanity and essence? Accordingly, that in New South Wales if the stimulation defense is alleged on charges of non-fatal injury in the intention of murder, if proven, will lead to an acquittal, not reduction in penalty. (Elliot Longman, 2000)

C) In the third case the majority of ordinary people can be affected by stimulation and results in a relative loss of control power of the behavior, but the defendant has gone too far in his reaction. Although the committed person's reaction is because of created stimulation, but according to the less severity of irritating compared to the previous mode, the community has expected him to prevail over his anger reasonably. As a result the criminal responsibility of the committed person still remains but according to the fact that such a provocation could make other people of the society react -however with less intensity- causes the relative decline of criminal responsibility that can appear in the form of diminished responsibility or reduction of severity of punishment.

D) Sometimes Excitation intensity is not enough to distort control power of the behavior that stimulated person commits criminal acts and violations of social norms on the subject. Social life and protecting the interests of the society demands that resist against most of stimulating factors during everyday life in the society that we face and in this regard we control our desires and emotions. Violation of criminal law creates absolute criminal liability in this case.

Personal and typical criteria

One of the criteria to classify the type and scope of stimulation, it was considered as normal social reaction. This standard has been called a measure of a provocation excuse. Along with a typical standard, there's also a personal criterion to assess the accused person's arousal in each case. In other words, reviewing stimulation excuse contains the two issues:

1. Has the stimulated person had state of arousal in practice? (Personal Criterion)

2. Is the general population in that situation motivated? (Typical Criterion).

A typical criterion has been used in terms of the common law "reasonable man" (2) and its purpose is to limit the scope of people's reaction when stimulation, in such a way that only the reaction that is justified in most of people's mind, will import within stimulation excuse. Judge Devlin 3 in the case of Duffy summarized 4 defense rules of provocation in the common law as follows and explaining stimulation defense criterion was in the same way until 1956:

"**Provocation**, act or series of acts which the perpetrator does while depriving his control, it can be caused to impress the accused person with emotion so that he cannot control his behavior in a

moment and it can cause any reasonable person to lose his behavior control suddenly and temporarily." (London, Sweet Maxwell, Fourth edition, 1998)

Using the term of the reasonable person about someone who commits the crime in a state of arousal because his behavior control power has been altered, is not above criticism. In fact, the aim of these standard setters refers to the ordinary people of society who, according to human nature may have been in a position of arousal to violate social norms.

Impact of provocative statements or actions are different for everyone and people according to gender, age, race, and his psychological structure have the different reaction against the stimulation. Considering the fact that all the individual features of stimulation are effective on influencing stimulation, we should consider a common man of society with all the attributes of the accused person such as age, sex, race and mental characteristics such as acrid or not, introversion or extroversion.

The stimulation and revenge difference

Stimulation excuse contains a delicate territory and completely accurate and in many cases may be confused with revenge. Basically, the reaction expressed by the stimulated person during arousal is itself a form of revenge. But the difference of vindictiveness in special meaning and stimulation excuse is this that vindictiveness is done when a person is in normal position in terms of domination of their actions and behavior and their control; but excuse of provocation, includes acts of revenge that will occur at the time of absolute or relative decline and the lack of ability to control his behavior.

Surely the time between excitation and the irritated person's reaction is of the utmost importance that if this time has been enough to cause anger and arousal to decrease, NEXT STEPS entered as a revenge worthy of punishment. Common Law approach is the use of the term "fast response" in this regard.

Discussion of the division of murder

Known among the people, in terms of intentional and unintentional murder is three types: intentional - quasi-intentional error - pure error. And apparently among the writers of our scholars all have accepted this division. Apart from the deceased Saduq, in his book "convincing" and "Hdayh" (Saduq Qomi, Mohammad bin Ali bin Babawayh) that considered murder as only two kinds of first-degree and an error. Of course, to mention these two types, is not the reason that he doesn't agree with quasi-intentional as acquisition, because it might be just mentioned in some traditions and quasi-intentional error wasn't deliberately mentioned, he says content of the same narrations.But other jurisprudents such as the deceased Mofid, Sheikh, HALABI, Sellar, IbnBarraj, IbnHamza and IbnIdris until Mohaqeq, we have investigated so far, all have mentioned this division, and later jurisprudents who were also explainers of scholars and researchers and others' books, have accepted this division and followed it.

Dividing killing in the public

In the same division between Sunni scholars, also Shafi'iyya and Hanbali have mentioned the same division but Abu Hanifa has been attributed that he considered killing five types. It must be mentioned that the author of a detailed book Sarakhsi - that is Hanafiyyah's one of detailed resources - does not accept this division assignment to Abu Hanifa. But among the Hanafiyyah jurists names those that have quintuplet division. However, the division quintuplets as following: deliberately - quasi-intentional - error - error current channel - murder for reason.

Sarakhsi "Almabsut" (1421 AH), our scholars do not know murder for reason as a kind but they will return some of it to first-degree murder, and some to quasi-intentional murder that Mohaqeq (rest in peace) cites branches at length in this field. A third division related to the Maliki jurists is: deliberately and error, and quasi-intentionally that they do not agree, but they know it of intentionally types. This means that if the definition of quasi-intentional is true on a murder, they know it punishable by death that now we will discuss about them in narrations in the future. Of course it is clear of the narration that is not special for Malik, but all the jurists of Medina respected on this way. Because the Malik is a member of scholars Medina and jurists of Medina like Malik and Rabia Al-Rai who were contemporary with Imam Baqir and Imam Sadiq, Iraqi jurists like Abu Hanifa and his companions has always been controversial. Muhammad ibn al-Hasan Alshybany, Abu Hanifa's famous student has authored "jurists Alrd Ali al-Madina" in this context and in which he quotes the fatwas of the scholars of Medina and then rejects them.

The origin of the division of murder

So among popular jurists, it is divided into three. But it is common among our companions that murder is divided into three types and is the origin of the narrations. Of course there are all three types in some of these narrations, and some types in others that it is clear from sum of them that different types of murder in common law narrations and words of Imams are the same three divisions that have been listed in the words of the scholars and each also has its own sentence. Of course the three parts have been mentioned in narrations have an interpretation of this kind that is as following:"Premeditated, fault and fault without doubt". It means that fault is listed instead of the quasi-intentional fault and instead of what is said sheer fault that is in jurists' triad division of words "Fault without doubt" has been mentioned. But the meaning is the same, the default meaning is the same in narrations that is defined for quasi-intentional fault in the words of scholars and the definition of "Fault without doubt" is the same as that has been listed for sheer fault in jurists' words. Of course, it's not that interpretation is not in the narrations of quasi-intentional error. But in the narrations that mention three types there is not this interpretation or else in some other narrations interpretation of as quasi-intentional fault has been listed practically. (Religions-Islam, vol. 4, p. 254) With this description of the murder is observed that the murder affected by severe mental excitement or emotion has no place in the division of jurisprudence.

The place of stimulation in the Penal Code of the Republic of Azerbaijan

The Penal Code of Azerbaijan Republic mental emotions including mitigation of punishment in accordance with paragraph 8 of Clause 1 of Article 59 proved in 2012 has been cited as mitigation scenarios of the republic of Azerbaijan Penal Code that in articles 122 and 129 of the Penal Code of the Republic of Azerbaijan commutation of the sentence for the offense has been intended because of the combination of (elements of crime) and describes compounds. (F. Y. Semendarov).

Described in Article 122 of the Penal Code of Azerbaijan stated that the deliberate murder which is done in time of intense spiritual and mental emotion by the committed person intentionally and with double plans that motivation and the motivation relation must be precisely known in the murder of intense spiritual emotions according to the above-mentioned spiritual emotions are of the psychological characteristics of humans that it is linked to certain behavior by individuals or other incentives.

Described in Article 122 of the Azerbaijani Penal Code states that severe mental emotions have to be done suddenly and unconsciously, unconscious thrill with motivation is associated with speed. Motive in such crimes (murder of spiritual emotions) can be created after a short time or during the starting point for a crime.

Revenge and anger and such incentives could be caused by illegal and immoral behavior of the victim, three types of motivations are not always made in connection with the crime but some of these modes are played to the face and other given reasons. Intent of the committed person in the crime resulting from severe mental emotions cannot be normally considered with intent of the committed murder equally because the murder of body is not always severe mental emotional state. And if it does not exist during intense emotional excitement of the committed person, the committed person's act will not be in the Article 122 of the Penal Code of Azerbaijan, with the described condition. If the person commits a crime because of intense emotions, he does not fit again in description of Article 122 of the Azerbaijani Penal Code because it has not been located immediately and only with contempt or aggression or immoral and illegal actions of the victim who is associated with simultaneous and immediate answer along with mental emotions is a part of Article 122 of the Penal Code of Azerbaijan.

Despite the humiliation or assault or acts immoral and illegal on victim that is done with immediate answer (in the same mode) together with unconscious mental emotions it is concluded that there is no distance between the criminal's intensive mental emotions, and the starting point for humiliation or rape or attempted illegal and immoral acts it means that it is not late for the criminal's severe mental emotions during the time of starting point for a victim acts if it is, the physiological influence of extreme mental excitement, as an act being done unconsciously or of ignorance, is not included, then material element of Article 122 of the Penal Code of Azerbaijan is an impulsive or unconscious criminal act.

The creation of severe mental emotions can have different factors in Article 122 of the Azerbaijani Criminal Code, these factors have been recognized 1) violation of the victim 2) severe humiliation in the third) and many immoral actions of victim.

In explaining the contempt in Article 122 of the Penal Code of Azerbaijan it can be said that noted humiliation should be heavy and extreme the that the content of the severity of the humiliation has not been determined in Azerbaijani law. It seems this kind of humiliation is the humiliation of Article 148 of the Penal Code of Azerbaijan Republic that baseless charges to some crimes, or humiliation of national pride, contempt for acts or omissions is about women, sexual and other items. This type of humiliation arises orally or in writing or conditions.

According to Article 120 of the Penal Code of Azerbaijan Republic if the criminal person who is affected by severe mental emotions does for the second time so that for the first crime investigated in the court, and this action was done again is not a repeated crime and commutation of the sentence for him in terms of the action is carried out according to the same substance for such crimes has been determined 16 year old persons in Azerbaijan.

According to Article 122 of the Penal Code of the Azerbaijan Republic if the person lives as a result of this intense spiritual emotion to kill two people is still inside the Article 122 of the Penal Code of the Azerbaijan Republic. It is an important condition that both murder cases is affected by severe mental emotions of confined states. This is crime is punishable in accordance with Article 8 Clause 1 of Article 59 of the Penal Code of Azerbaijan which is extenuating circumstances that is two years in prison up to 5 years imprisonment, while the punishment of murder in Azerbaijan from 12 to 15 years and in extreme conditions is from 15 to 20 this year. (F. Y. Semendarov).

Iran's incitement law

In Iranian law, incitement is never an excuse for systematic and regulated and had not been dominant as a general rule. Lay among the codified law, cases could be seen that the legislator has implicated directly or indirectly on excitation of criminal responsibility. In some cases arousal eliminate criminal responsibility for crimes committed and in other cases has led to a reduced sentence. With regard to this issue following paragraphs we will wake your content.

A) Stimulating, elimination of criminal responsibility

Murder in bed

Under Article 179 of the Penal Code Act of 1304, if a husband viewed his wife with a stranger in a bed or in a state that is as being on a mattress he committed murder or wounding or assault one of them or both, he was exempt from punishment. Legislation has codified no scientific base about the excitation excuse, but only described one of the states of arousal and declared that the perpetrator did not face punishment because of the killing in this position. A similar provision exists in theIslamic Penal Code. According to Article 630 of this law, when a man sees his wife in bed with a strange man and knows that his wife has done consciously at the same time they can be killed and if the woman is [??Mkrh??], only the man can be killed. (Of course, in terms of origin, there is an essential difference between the two materials: Article 179 of the Penal Code was from the second paragraph of article 324 of the former French Penal Code while Article 630 is derived from legal sources.) Much is said about

these two words; so we do only a brief review of these materials in terms of what we've said so far on the excuse stimulation.

1) About the origin of exemption of the committed person three major justification is expressed: the majority of jurists have made legitimate this issue in the context of self-defense and hence, some know act of the committed person as legitimate self-defense against invasion reputation and honor. But absolute order to submit a license to kill, is not compatible with the rules of self-defense even if the woman obeys.Hence some put it in more general framework of self-defense and self-defense with its division into special and general, attempted to this type of murder is known as examples of the public self-defense which aims to ward off denying and protect the ethics of society. ((Abdul QadirAwda), AltshryAljnayy al-Eslami 512-513) in response to this argument is to say: firstly legislator has determined punishment to protect moral of the society for adultery and may consider it possible to run through the competent authorities. Secondly, if protecting and defending society and reputation and honor wants to be expressed in killing the individual, two things remain unanswered; first why the general rules of the defense in this case have not been seen (Including the appropriateness and disposed to defense may at least) (Sanei - 69-1371) (Odeh, Abdul Qadir, 207-231) (Hurr Alamly- 148) and then the unlawful practice in question is located and basically the person does not seek to prevent something. So giving this title to the defense is not problem.

Other group brings up the problem of divine punishment execution if the first martyr in courses, knows doing this action as divine punishment brought by the husband and to him husband is allowed to do this.(Martyr First, 165) so based on this idea, because adulterer men and women are worthy of divine punishment, the husband's act for killing one or both of them is religious order's implementation.

This view is also criticism because, first, people are not competent to run around in proving competence and their implementation is in the hands of the ruler and is his responsibility. (Mehrpour, 229, 1379) And discussion of the permissibility or impermissibility filing is arose by the husband in case of absence of Adel Imam and ruler. Second, murder punishment is limited in special cases such as being married man or woman adulterer and adulteress, despite the relative intimacy between them and the infidel adulterer and Muslim adulteress. While none of these cases, may be realized in the subject. Thirdly, because even if accepted, would not be considered a license to kill profligate and only justifies murder of adulteress.

As such, the most logical assumption in this case is the committed person's arousal and loss of behavior control. If you accept this view, all forms of the assumptions mentioned above will be removed. Of course some (Mehrpour, 229, 1379) in response to this argument have raised the objection that "As regards Article 630, which is based on the legal texts, such justification cannot be accepted. It may be thought of adultery his punishment is murder in any case but about her, assuming no access to husband condition of being married is not certain.

Because arousal and mental agitation of husband viewing his wife's committed adultery with a strange person has not been mentioned in the word FEGH early and late. It is therefore not the last-

mentioned Article such as irritation or agitation of the soul. "(Habibzade, 83-84, 1380) in response to this objection can be said basically, Islamic jurists have not followed imposed on philosophy and religious orders in the individual sentences, except in some cases, reference to the sentence is not seen in the most of sentences, because the goal of Islamic law provisions is to discover the legislator's mentioned sentences, whether the wisdom in the legislator's issuing sentences is clear or not. So because the mental arousal and excitement has not been mentioned as the sentence in the jurists' word, it cannot reflect the effects of the ruling in a state of arousal.

B) According to personal criteria, arousal and loss of control behavior is required for each case should be proved in particular; while none of these cases did not consider this issue. In other words, the legislator merely knows situations that observing husband and stranger man causes arousal for all men.

So that control behavior completely deprived.

C) Article 630 of the Penal Code by indicating "and at the same time to kill them" knows the urgent response necessary thus the distance between the observed action and reaction would excuse out of the realm of action is to stimulate and transform it into revenge; while Article 170 of the Penal Code does not prescribe any time limit for a response.

D) Stimulation effect causes relative or absolute negation of criminal responsibility of the committed person the deterioration in freedom of the will and depriving control of the behavior. Thus stimulating the elimination of criminal responsibility should be considered. Article 170 of the phrase "exempt from punishment", the concept was to mind. But the Penal Code with the use of the phrase "can kill them," creates the doubt that the man has "right" to kill them, and this is not compatible with the principles of removing criminal liability.

E) Provoke according to the principles of excitement excuse and its roots in stripping the power to control behavior, if the husband has previous knowledge of his wife's relationship with a foreign man or primarily for the purpose of destroying him with the picking introduction and making position to provide such an act the exemption referred to in Article 630 or Article 170 cannot be used. (Keshavarz, 219, 1378) In other words, the condition of applying Article 630, resulting in the sudden exposure of action scenes and stripping a person and depriving the power to control behavior as it has been said exemptions "... solely for the anger that suddenly loses once to die for a crime that has elevated the state decision is not directly applicable." (Ashraf Samadi, Bita, 35) The condition stipulated in Article despite the lack of it can be deduced according to the situation.

Other items that excitation causes abortion be punished, as paragraph 36 of 22.5.1324 adopted a code of wrongdoing noted that whereby the behavior of those in the streets and the roads were grappling with each other or with bad words spoken or the sound of their unsightly, be considered offense and punishment by a fine up to five thousand riyals had been set, but if a person contrarily insults to other person swearing, insulting, his actions were not punishable.

Legislator in this matter has not mentioned the direct reference to the excitation of a particular type of exemption stipulated that It seems that the root stimulation and arousal, it should not insult the audience. In this case, the objections that were raised in the two previous materials, is also entered here: Condition of removing criminal liability is on a stimulated person's stimulation excuse that must be proven in each case. Also according to human criteria, logical and highly motivated audience insults, In absolute terms or relative to their criminal responsibility may be eroded or have the full responsibility, while stimulating the mere existence of legislation to be considered disclaimer.

Other noteworthy that in the opinion of some lawyers when someone verbally insulted in front of others later insulted him in writing, the exemption has not been mentioned in this article. (Pod, Abraham, 378, 1352 and Mir Mohammad Sadeghi, 59, 1382) at the root of the distance between the stimulation and the resulting reaction that quenched person has.

Legal Department judiciary by indicating opinion No 7/3253 dated 22/06/59 "the insult, being spontaneous action is required, so if someone is insulted and tries to insult in response to the insult is not subject to the sentence of this article", the legislative approach endorsed in 1324. Of course, now some believe according to Article 608 of the Penal Code and other laws stipulate punishment to fall on the insults were not spontaneous, there is a reason for this. (First martyr, 158)

F) Attribution of commission of adultery to parties

Perhaps another example that we can take for example the issue of the Penal Code Amendment Act of 1392 is C, article 2561 of the Penal Code, attribution of commission of adultery to parties is known as lapse of penance. The reason for this case is the stimulatory that is done in the other participants for adultery by adulterers the same stimulation as a mitigating factor that makes the punishment is too much. Note (e) of Article 251 of the Azerbaijani Criminal Code provides: "If two people are accused of adultery to each other, whether they are similar or different, punishment is lapsed and everyone is shot down up to 74 lashes." Of course mitigation of penalties imposed in retaliation, approximately, is problematic, because the topic of Article 38 is maximum and minimum punishment proved in 2013. Of course, to consider the role of provocation by the victim was better that Note C above article to be set in this way that if everybody first starts to accuse the other one will be punished for accusing penance and a person who tries to accuse mutually, will be punished to maximum or minimum penance.

Conclusion

Stimulation as one of the defense of punishment mitigation in the common law has a long history. In contrast, in Roman and Germanic law system and Islamic jurisprudence on this issue has not been noticed much. Thus, our legal system is a mix of Roman law system - Germanic and Islamic, not rules and general principles governing this excuse cannot be found as comprehensive and systematic ones. Only some forms of stimulation lay among the codified law as a punishment because of extenuating or elimination, is deduced and mining.

Revising old views, and adopt a new approach is needed for the material presented on the excuse of provocation. The legislator is better to remove specific cases of stimulation excuse, including Article 630 and paragraph 3 of Article 38 of the Penal Code and Instead of giving any incitement to such principles that govern all types of punishment, in the form of one or more material is provided in the section about criminal liability. In maximum and minimum punishment according to this note that the authority to decide on the type and severity of punishment is made by the state legislature, applying special rules to stimulate excuse is without a problem.

The origin of materials 630 and 261 of the Penal Code - which causes to exempt from retaliation punishment and accusing punishment is in a state of arousal - in the related traditions suggests that stimulation excuse to punish non-discretionary categories were also considered by holy legislator and the fact that only certain cases of stimulation excuse in tradition should not make the exception count and rely on the same issue. According to the importance that holy legislator has given for free will and choice, definitely tarnishing them from the point of view of Islam is also effective in a state of arousal in liability. It does not seem that applying the regulations of stimulation has no legal forbiddance on non-discretionary punishment.

The Penal Code of the Republic of Azerbaijan mental emotions, including mitigation of punishment in accordance with paragraph 8 of Clause 1 of Article 59 of the Penal Code of 2012 is of mitigation states defined in Azerbaijan that in Articles 122 and 129 of the Penal Code of the Republic of Azerbaijan because of the combination of (elements of crime) and description is compounds of articles that commutation of the sentence has been considered to the committed person.

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